UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
v.	)	Criminal Action No. 10-223 (RBW)
	)	
WILLIAM R. CLEMENS,	)	
	)	
Defendant.	)	
	)	

VOIR DIRE QUESTIONS

The Court will permit individual voir dire of each potential juror, all of whom will be brought individually to the courtroom from another location after the Court has posed the following questions to the entire venire. The Court will also permit counsel to ask jurors additional questions about their employment, which will be listed in general terms on the jury list that counsel will be provided before the voir dire commences. The only questions that will not be permitted are those that are repetitive of questions already asked or which the Court finds otherwise inappropriate.

The Court will pose the following questions to the venire:

(1) What I am about to indicate are the allegations being made by the government in support of the criminal charges that have been filed in this case. Understand, however, that what I am about to state is not evidence, but at this point merely are the allegations being made by the government in support of the indictment you will be asked to consider if you are selected as a juror in this case.

Statement of the Case:

In February, 2008, Mr. Clemens testified before the United States House of Representatives Committee on Oversight and Government Reform in connection with that Committee's investigation into the use of performance enhancing drugs (anabolic

steroids and human growth hormone) in Major League Baseball. The indictment in this case arises from that testimony. The indictment charges the defendant, William R. Clemens, also known as Roger Clemens, with one count of obstruction of Congress in violation of 18 U.S.C. § 1505, three counts of making a false statement in violation of 18 U.S.C. § 1001, and two counts of perjury in violation of 18 U.S.C. § 1621. The indictment is not evidence. The indictment is simply the document used to advise a defendant of the accusations against him. The defendant has pleaded not guilty to all of the charges.

(a) Do you personally know anything about this case?

(b) Have you read or heard anything about this case in the news media?

(2) Based just upon what I have told you about this case, do any of you have any feelings about the innocence or guilty of the defendant?

(3) The lawyers representing the United States are Daniel Butler, Steven Durham, Gilberto Guerrero, Jr., and Courtney Saleski, who are Assistant United States Attorneys for the District of Columbia. Do any of you know or recognize Mr. Butler, Mr. Durham, Mr. Guerrero, or Ms. Saleski, or have you heard anything about them?

(4) The defendant in this case is William R. Clemens, also known as Roger Clemens, a former Major League Baseball pitcher who played for the Boston Red Sox, the Toronto Blue Jays, the New York Yankees, and the Houston Astros. Does anyone know or recognize Mr. Clemens or have you heard anything about him?

(5) The lawyers representing the defendant are Rusty Hardin, Andy Drumheller, Derek Hollingsworth, Joe Roden, and Jeremy Monthy of the law firm of Rusty Hardin & Associates, located in Houston, Texas, and Michael Attanasio of the law firm of Cooley, LLP, which has offices located in San Diego, California and Washington, D.C. Do any

of you know or recognize any of Mr. Clemens's attorneys or have you heard anything about them? Have any of you had any dealings with either of their law firms?

(6) Do any of you know or recognize anyone else in the courtroom, including myself or any of your fellow jurors?

(7) Is there anyone who feels that they might have any difficulty being fair and impartial in this case due to the race or ethnicity of anyone who is involved in this case?

(8) The parties will now read the names of their witnesses and others who may be mentioned during the trial.

(a) (The government's witnesses)

(b) (The defendants' witnesses. The Court will advise the panel that the defendants are not required to call witnesses).

Do any of you know any of these individuals or recognize their names?

(9) (The Court will explain, in general terms, the principles of reasonable doubt, presumption of innocence, and burden of proof). Would any of you have any problems accepting and applying any of these principles of law?

(10) Every defendant is presumed innocent and cannot be convicted unless the jury unanimously and based solely on the evidence presented at trial, decides that his guilt has been proven by the government beyond a reasonable doubt. Would you have difficulty following this rule?

(11) Is there anyone who feels that a defendant should have to prove his innocence?

(12) Every defendant in a criminal case has the absolute right not to testify, and if a defendant decides not to testify, you cannot in any way hold that decision against him or consider his decision not to testify in deciding whether the government has proven that he is guilty beyond a reasonable doubt. Would the decision by a defendant not to testify cause you to

conclude that he is guilty?

(13) A defendant is not required to call any witnesses. Would the decision by a defendant not to call witnesses cause you to conclude that he is guilty?

(14) Is there anyone who feels that merely because the defendant has been charged with criminal offenses in this case probably means he is guilty?

(15) You will be instructed that the grand jury indictment is not evidence. The indictment is just a formal way of charging a person with a crime in order to bring him to trial. It is not evidence of the guilt of the defendant and you must not draw conclusions about the guilt of the defendant just because he has been indicted. Would any of you have any difficulty following this instruction?

(16) Does the fact that there are several criminal offenses charged against the defendant in this case cause any of you to believe that at least one charge must be true?

(17) Each of the criminal charges of the indictment charges a separate criminal offense. You must consider each offense, and the evidence which applies to it, separately, and if you are able to reach a decision as to any of the charges, that decision must be a separate decision as to that charged based only on the evidence that relates to it. The fact that you may find the defendant guilty or not guilty on any one of the charges of the indictment should not influence your verdict with respect to any other charges in the indictment. Would any of you have any difficulty following this instruction?

(18) Do you have any formal education or training in any field of science, including the sciences of biology, chemistry, medicine, sports medicine or physical fitness?

(19) Are you familiar with the science of DNA, or have you received any training on this science?

(20) Are you familiar with the science of chemical analysis, or have you received any training

on this science?

(21) Some of the witnesses in this case may be scientific experts. Do you feel that scientific experts retained or employed by the government are more or less believable simply because they are used and paid by the government?

(22) Do you feel that scientific experts retained by the defense are more or less believable simply because they are used and paid by the defendant?

(23) Have you or an immediate family member ever coached organized sports?

(24) Have you or an immediate family member ever played professional sports?

(25) Do you have any immediate family members who play organized sports?

(26) Do you watch or listen to sports networks or sports programs or follow sports in the news?

(27) Do you personally know any current or former professional athletes?

(28) Do you have any extremely positive or negative opinions about professional athletes in general?

(29) Have you ever discussed, read about, or had thoughts about the use of anabolic steroids or human growth hormone, which is also known as HGH?

(30) Have you or has someone close to you ever used anabolic steroids or human growth hormone?

(31) Do you believe the use of human growth hormone or anabolic steroids is prevalent in professional sports?

(32) Do you have any feelings about whether the use of human growth hormone or anabolic steroids by individuals who play sports should be illegal, including individuals who play professional sports?

(33) Do you have any feeling about whether possession of human growth hormone or anabolic

steroids without a doctor's prescription should be punishable as a crime?

(34) Have you ever engaged in weightlifting, bodybuilding or an intense physical conditioning program?

(35) Are you a fan of professional baseball?

(36) Have you ever attended a Major League Baseball game?

(37) Do you have any opinions about Major League Baseball?

(38) Do you have any opinions about or resentment toward professional baseball players in general?

(39) Barry Bonds is a retired Major League Baseball player. Have you heard or read anything about his recent perjury trial that took place in California in 2011?

(40) Are you familiar with recent investigation and charges concerning the Bay Area Laboratory Co-Operative's (BALCO) involvement with steroids or performance enhancing drugs?

(41) Ryan Braun is a current Major League Baseball player. Have you heard or read anything about Mr. Braun's in the media recently?

(42) Lance Armstrong is a retired professional cyclist. Have you heard or read anything about Mr. Armstrong in the media recently?

(43) Do you know or have you heard of former Senator George Mitchell?

(44) Have you heard of a report drafted on behalf of Major League Baseball regarding the use of performance-enhancing drugs in professional baseball?

(45) Do you personally know any current or former members of Congress or any Congressional staff members?

(46) Do you have any feelings or opinions, whether positive or negative, about the United States Congress or any particular member of Congress that might affect your ability to be

a fair and impartial juror in this case?

(47) Have you, a family member, or close friend ever testified before Congress?

(48) Are you familiar with the United States House of Representatives Committee on Oversight and Government Reform?

(49) Some of the witnesses in this case may be former or current Congressional staff members. Do you have any feelings about Congressional staff members that would affect your ability to be a fair and impartial juror in this case?

(50) Are you familiar with the hearings that Congress held in 2005 and 2008 regarding the use of performance-enhancing drugs in Major League Baseball?

(51) Do you think Congress or any government agency should be involved in investigating and/or policing the use of steroids and other drugs in professional sports?

(52) If someone is proven beyond a reasonable doubt to have lied to Congress under oath, do you have any feelings about whether that should be a crime?

(53) Do any of you feel that a person accused of presenting false testimony to Congress should not be prosecuted by the government for allegedly committing a crime?

(54) Have you or a family member or close friend had any dealings with the Federal Bureau of Investigation, the Internal Revenue Service or the Food & Drug Administration?

(55) Do you have an opinion about the appropriateness of the government using individuals who themselves were involved in illegal behavior as cooperating witnesses in a criminal trial?

(56) If you are selected as a juror in this case, you must have the ability and the willingness to discuss the facts of the case with your fellow jurors during the jury's deliberations. Is there anyone who feels they cannot do this?

(57) If you are selected as a juror in this case, you must have the ability to make your own

independent decision about the defendants' guilt or innocence. Is there anyone who feels they could not do this?

(58) If you are selected as a juror in this case, you will be instructed that if you find that the government has proven beyond a reasonable doubt every element of an offense with which the defendant is charged, it is your duty to find the defendant guilty of that offense. On the other hand, if you find that the government has failed to prove any element of an offense beyond a reasonable doubt, you must find the defendant not guilty of that offense. Is there anyone who would have a problem following this instruction?

(59) If you are selected as a juror in this case, you must follow all of the instructions I will give to you during and at the conclusion of this trial. Is there anyone who feels they could not do this?

(60) If you are selected as a juror in this case, you must decide this case solely based on the evidence presented to this jury during the trial, along with the legal instructions I will give you. Is there anyone who feels they could not do this?

(61) If you are selected as a juror in this case, you must be able to decide this case solely on what you hear and see in this courtroom. In that regard, it is essential that you not permit yourself to come into contact with anything related to this case other than what you hear and see in this courtroom. Therefore, if you are selected as a juror, you must have the ability not to talk to anyone about this case, to avoid any news reports that might be related to the case, and not take any efforts on your own to find out anything related to this case from books, the internet, or any other source. If you cannot do these things, you cannot permit yourself to become a member of the jury in this case. Is there anyone who feels they could not do these things?

(62) In this particular case I suspect that there may be a fair amount of news and other media

coverage about this case. One of the things you will have to do if you are selected as a juror in this case is to avoid all contact with the news or other media coverage of the case. Therefore, throughout the trial, if you are a member of the jury, you will not be able to read the newspaper before it is screened by court staff and you will have to avoid watching or listening to the news and any other media programs, including internet or blog sites. Would any of you not be able to strictly follow this requirement if you are selected as a juror in this case?

(63) If you are selected as a juror in this case, you must have the ability to avoid talking to anyone about this case during the entire course of the trial. This even includes not talking about the case to your fellow jurors until you are told you can do so at the conclusion of the trial. In addition, at no point during the course of this trial can you discuss this case over the internet, or in any other manner including, but not limited to, e-mail, text messaging, or any social networking sites such as Twitter, Facebook, and Myspace. Is there anyone who feels they could not do these things?

(64) If you are selected as a juror in this case, you must keep an open mind during the entire trial and not begin to decide anything about the case until all of the evidence is presented to you and I have given you my final instructions at the conclusion of the trial. Is there anyone who feels they could not do this?

(65) This case involves testimony that was presented to a Committee of Congress about events that happened up to 10 years before the testimony was given. Do you believe that an inability to accurately recall all the details of an event is the same thing as making a false statement?

(66) Do you believe that it is absolutely impossible for a person to believe very strongly that he has certain memories about something, even though it is later determined that those

memories may be inaccurate?

(67) Would any of you have any difficulty fairly judging the credibility of a law enforcement witness, which would include individuals who work for the FBI?

(68) Have any of you, your close friends, or your close relatives ever served as a law enforcement official or applied for employment for such a position, which would include a police officer, law enforcement officer, prosecutor, prison guard or official, probation officer, parole officer, or a private security officer or guard?

(69) Have any of you, your close friends, or your close relatives had interactions with the police or other law enforcement officials, whether positive or negative, that might impair your ability to give either side in this case a fair trial?

(70) Are any of you lawyers or have any of you ever studied law?

(71) Have any of you, your close friends, or your close relatives ever served as a defense attorney, defense investigator, or in some other capacity where you or they provided services to people charged with crimes, or applied for employment in such positions?

(72) Do any of you have any feelings about prosecutors, defense lawyers, or people accused of crimes that might affect your ability to be a fair juror in this case?

(73) Have you ever served as a grand juror or petit juror in a criminal case?

(74) Have any of you, your close friends, or your close relatives ever worked in a court system and had the responsibility of working with criminal cases?

(75) Have any of you ever participated in any type of anti-crime activity or victims' rights organizations, such as neighborhood watch or the Orange Hats Program?

(76) Have any of you ever participated in any type of inmate assistance or ex-offender programs?

(77) There are two types of evidence, direct evidence and circumstantial evidence. When a

witness, such as an eyewitness, asserts actual knowledge of a fact, that witness's testimony is direct evidence. On the other hand, evidence of facts and circumstances from which reasonable inferences may be drawn is circumstantial evidence. For instance, assume a person looked out a window and saw that snow was falling. If the person later testified in court about what the person had seen, such testimony would be direct evidence that snow was falling at the time the person saw it happen. Assume, however, that the person looked out a window and saw no snow on the ground, went to sleep, and then saw snow on the ground the next morning. The witness's testimony about what the witness had seen would be circumstantial evidence that it had snowed while the witness was asleep. The law makes no distinction between the weight you should give either kind of evidence, nor does circumstantial evidence require a greater degree of certainty than direct evidence. Is there any member of the jury panel who would have any difficulty accepting this principle of law and applying it as I have just indicated?

(78) Have any of you ever participated in any efforts to either increase or lessen the punishment of individuals who are convicted of criminal offenses?

(79) Have any of you, your close friends, or your close relatives ever been the victim of a crime, a witness to a crime, or someone charged with a crime, regardless of what may have happened in the case?

(80) Do any of you have any religious, moral, or philosophical beliefs that would affect your ability to sit as a juror in a criminal case?

(81) Do any of you have any health problems, whether physical or mental, that might impair your ability to sit as a juror in this case?

(82) Are any of you taking medication that might impair your ability to sit as a juror in this case?

(83) Do any of you have any problems hearing or seeing?

(84) Do any of you have any problems understanding or speaking the English language?

(85) This trial could take up to six weeks to complete. Is there anyone who could not sit as a juror in this case due to the anticipated length of the trial?

(86) Is there anyone who for any reason feels he or she could not sit as a juror in this case and be fair to both the government and the defendant?